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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
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11 SWORDS TO PLOWSHARES,

12 Plaintiff,

13 v.

14 ROBERT KEMP,

15 Defendant.
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Case No.: C01-5459-MJJ

**DEFENDANT ROBERT KEMP'S
REPLY IN SUPPORT OF MOTION TO
DISMISS PURSUANT TO F.R.C.P. 12(b)(6)**

Date: April 23, 2002
Time: 9:30 a.m.
Place: Courtroom 11
Judge: Hon. Martin J. Jenkins

Complaint Filed: December 28, 2001
Amend. Comp. Filed: January 31, 2002

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REPLY IN SUPPORT OF MOTION TO DISMISS

**LANDLORD DID NOT PROPERLY PLEAD COMPLIANCE WITH THE
APPLICABLE FEDERAL REGULATIONS**

In its opposition, Landlord asserts that by merely stating in its Amended Complaint that it provided Mr. Kemp notice “in compliance with state and federal law,” that it sufficiently plead the facts required to evict Mr. Kemp. (Opposition 3:1-4; quoting First Amend. Comp. 5:1-3.) This is incorrect: Landlord’s allegation is merely a legal conclusion and does not constitute *facts* sufficient to survive a motion to dismiss:

Conclusory allegations or *legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss*. While facts must be accepted as alleged, this does not automatically extend to bald assertions, subjective characterizations, or legal conclusions.

(*General Motors Corp. v. The New A.C. Chevrolet, Inc.* (3d. Cir. 2001) 263 F.3d 296, 333, emphasis added.)

Landlord’s assertions that its service complied with the applicable Federal and California law amounts to a mere legal conclusion; thus Landlord has not adequately set forth a claim upon which relief may be granted.

Dated: April 9, 2002

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By /s/ Chad DeVeaux
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